

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Rev. May 2007

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BRIAN FIELMAN, Individually and  
On Behalf of All Other Persons  
Similarly Situated,

Plaintiff(s),

**ORDER FOR COURT CONFERENCE**

-against-

07 Cv. 6815 (CLB) (MDF)

PEPSICO, INC. THE PEPSI BOTTLING  
GROUP, INC. and PEPSI BOTTLING  
VENTEURS, LLC,

Defendant(s).

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To: The Attorney(s) for Plaintiff(s)

Sufficient cause appearing, counsel for all parties herein shall attend a conference at the time and place fixed below, for the purpose of Case Management and scheduling pursuant to Rule 16, F.R. Civ. P.

**YOU ARE DIRECTED TO NOTIFY ALL ATTORNEYS IN THIS ACTION IN WRITING.**

**DATE AND PLACE OF CONFERENCE:**

**FRIDAY, OCTOBER 5, 2007, AT THE UNITED STATES COURTHOUSE,  
WHITE PLAINS, NEW YORK, IN COURTROOM 218 AT 9:00 A.M.**

**SUBJECTS FOR CONSIDERATION AT THE CONFERENCE:**

1. The Court will request from each attorney, beginning with Plaintiff's counsel, a brief oral statement reporting the status of the case, setting forth the factual and legal basis for the claims or defenses and outlining the nature of the dispute(s) to be adjudicated. Subject matter jurisdiction will be considered, as well as any other issue which may be relevant to case management.

2. The Court will inquire whether the defense of qualified

immunity from suit has been or will be asserted by any defendant(s) with respect to any claims(s) in the case.

3. In cases where Rule 26(f) F.R.Civ.P. applies, counsel for the parties shall confer in compliance therewith at least twenty-one (21) days prior to the scheduled conference to agree upon a proposed discovery plan which shall assure trial readiness within six (6) months of the date of the conference. If so advised, a written report generated pursuant to Rule 26(f) may be attached to and incorporated in the Court's Civil Case Discovery Plan and Scheduling Order. A longer period than six months to become ready for trial will be granted by the Court only after hearing counsel, and where the interests of Justice require. Please fill out the Court's form of Civil Case Discovery Plan and Scheduling Order by agreement of counsel and bring it with you to the Courthouse. Use of the official form is preferred. In the absence of an agreement, the Court will impose its own Civil Case Discovery Plan and Scheduling Order at the conference after hearing counsel.

4. Where there is written consent to trial before the Magistrate Judge, trial will be held on an agreed date certain, and the Magistrate Judge will prepare or amend the Civil Case Discovery Plan and Scheduling Order consistently with such date.

SO ORDERED.

Dated: White Plains, New York  
August 16, 2007

*Charles L. Brieant*  
\_\_\_\_\_  
Charles L. Brieant, U.S.D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Rev. January 2006

BRIAN FIELMAN, Individually and On Behalf  
of All Other Persons Similarly Situated,

Plaintiff(s),  
- against -

PEPSICO, INC. THE PEPSI BOTTLING GROUP,  
INC. and PEPSI BOTTLING VENTUERS, LLC,

Defendant(s).

CIVIL CASE DISCOVERY PLAN  
AND SCHEDULING ORDER

07 Civ. 6815 (CLB) (MDF)

**This Court requires that this case shall be ready for trial on or after March 7, 2008.**

The following Civil Case Discovery Plan and Scheduling Order is adopted, after consultation with counsel for the parties, pursuant to Rules 26(f) and 16 of the Federal Rules of Civil Procedure.

The case (is) (is not) to be tried to a jury.

Joinder of additional parties must be accomplished by \_\_\_\_\_.

Amended pleadings may be filed until \_\_\_\_\_.

**Discovery:**

1. Interrogatories are to be served by all counsel no later than \_\_\_\_\_, and responses to such interrogatories shall be served within thirty (30) days thereafter. The provisions of Local Civil Rule 33.3 (shall) (shall not) apply to this case.
2. First request for production of documents, if any, to be served no later than \_\_\_\_\_.
3. Depositions to be completed by \_\_\_\_\_.
  - a. Unless counsel agree otherwise or the Court so orders, depositions are not to be held until all parties have responded to any first requests for production of documents.
  - b. Depositions shall proceed concurrently.
  - c. Whenever possible, unless counsel agree otherwise or the Court so orders, non-party depositions shall follow party depositions.
  - d. If the defense of qualified immunity from suit as a matter of law has been or will be asserted by any defendant(s) with respect to any claim(s) in the case, counsel for any such defendant(s) shall, within thirty (30) days of this order depose plaintiff(s) at least concerning all facts relevant to the issue of qualified immunity. Within thirty (30) days thereafter defendant(s) shall serve consistent with Local

Rule 6.1 and file a motion under Rule 12(c) or Rule 56, returnable on a date posted in the New York Law Journal by Judge Brieant for hearing motions. The motion shall, in the absence of agreement of counsel, be limited to the issue of qualified immunity, and plaintiff(s) version of the events shall be assumed true for purposes of the motion. **Failure to comply with this provision of this Order shall operate as a waiver of the opportunity to resolve the issue of qualified immunity by motion prior to trial.**

4. Any further interrogatories, including expert interrogatories, to be served no later than \_\_\_\_\_.
5. Requests to Admit, if any to be served no later than \_\_\_\_\_.
6. Additional provisions relating to discovery agreed upon by counsel for the parties (are) (are not) attached and made a part hereof.
7. All discovery is to be complete by \_\_\_\_\_.

Dispositive motions, if any, must be served on notice as required by Local Civil Rule 6.1, and must be returnable before the Court on a published motion day, no later than three weeks before the ready for trial date.

Next Case Management Conference \_\_\_\_\_.  
(This date will be set by the Court at the first conference)

Joint Pretrial Order is required only if counsel for all parties agree that it is desirable, or the Court so orders.

This case has been designated to the Hon. Mark D. Fox, United States Magistrate Judge at White Plains for discovery disputes if the Court is "unavailable" and for trial under 28 U.S.C. § 636(c) if counsel execute their consent in writing.

Strict compliance with the trial readiness date will be required. This Plan and Order may not be changed without leave of the Court or the assigned Magistrate Judge acting under a specific reference order.

Upon signing a Consent for Trial Before a United States Magistrate Judge, the Magistrate Judge will establish an agreed date certain for trial and will amend this Plan and Order to provide for trial readiness consistent with that agreed date.

SO ORDERED.

Dated: White Plains, New York

Charles L. Brieant, U.S.D.J.